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IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

RONALD S. MONROE.

PETITIONER

Versus

HILTON BUTLER,
WARDEN, LOUISIANA STATE PENITENTIARY,
ANGOLA, LOUISIANA

RESPONDENT

REPLY TO PETITION FOR WRIT OF CERTIORARI
TO THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS, LOUISIANA

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Hilton Butler, Warden, and the State of Louisiana, through his undersigned representatives, respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari filed herein.

STATEMENT OF THE CASE

As an introductory remark, the State of Louisiana is compelled to respectfully request this Honorable Court to carefully review the record of this case to verify opposing counsel's appreciation of the proceedings below. Monroe was convicted on January 23, 1980. Numerous decisions and opinions have been rendered in the process of exercising Monroe's right to appeal. Each ruling contributes some insight to the questions now propounded for review. Your respondent respectfully asks this Honorable Court to carefully scrutinize the conclusions and interpretations offered by petitioner in his application before reaching a decision on the merits of petitioner's claim. For this case is not about federalism or comity, or of ignorance and defiance by the courts of Louisiana, it is about the simple question of whether Monroe presented sufficient newly discovered evidence to support a grant of a new trial.

The Murder

In the early morning of September 10, 1977 Theodise Collins (then 12 years old) and Joseph Collins (then 11 years old) watched Ronald Monroe enter their home and brutally stab their mother, Lenora Collins, to death. Monroe, whom both children knew as a co-tenant living in the other half of their two-family residence, was arrested in his home one hour later. Monroe's motivation for the killing was an eviction notice recently sent by the victim's family.

The Conviction

On January 23, 1980, after a previous conviction had been overturned, petitioner was brought to trial.¹ Accepting the testimony of the victim's two children, and rejecting Monroe's alibi, the jury found him guilty of first degree murder and unanimously recommended the death sentence.

Post Conviction/Newly Discovered Evidence

In July, 1980, six months after petitioner's conviction the New Orleans Police Department (N.O.P.D.) was contacted by Detective Joseph Gallardo of the Pontiac, Michigan Police Department. In the course of investigating one George Stinson's murder of his common-law wife in Michigan, Gallardo had received unverified information from Stinson's cellmate. Detective Gallardo related to Sergeant John McKenzie of N.O.P.D. the substance of an interview with Stinson's cellmate during which the cellmate had quoted Stinson saying, *inter alia*, that "the same thing happened" to his first wife, Lenora Collins.

All this information was recorded by Sergeant McKenzie, who then dispatched his notes to the detectives who had been involved in the Collins investigation. No further action was taken on this information.

Upon discovering this evidence in December, 1983, petitioner filed a motion in Orleans Parish Criminal District Court seeking a new trial, or, in the alternative, post-conviction relief. Monroe also applied for a stay of his execution

1. The reversal of Monroe's first conviction was based on error during jury selection. See, *State v. Monroe*, 366 So.2d 1345 (La. Sup. 1978).

(then scheduled for January 5, 1984). The Criminal District Court denied petitioner's motion. The Louisiana Supreme Court affirmed the district court hours later.

After the state courts denied relief, the federal district court acted upon a habeas petition filed several days earlier, and stayed petitioner's execution. After a hearing in which he heard testimony from Detective Gallardo and Stinson, a federal magistrate recommended that the writ be granted. (See Magistrate Livaudais' findings and conclusions at Appendix D of petitioner's brief).

The district court adopted the magistrate's report agreeing that the information should have been disclosed to petitioner. The court issued the writ. However, having concluded that petitioner's due process rights under *Brady* had been violated, the court, in direct response to petitioner's insistence that the only proper relief was *release or retrial*, ordered the Louisiana courts to provide him with a full hearing on his motion for a new trial. (See the district court's Memorandum Opinion at Appendix C of petitioner's brief).

Monroe appealed to the U.S. Fifth Circuit Court of Appeals which upheld the district court's choice of remedy. *Monroe v. Blackburn*, 748 F.2d 958, 960 (CA5 1984). This Honorable Court denied petitioner's application for a writ of certiorari, *Monroe v. Blackburn*, ____ U.S. ____ , 106 S.Ct. 2261 (1986).

Failing in his attempts to have the federal courts limit the remedies to release or retrial, Monroe returned to the Criminal District Court where a full evidentiary hearing on Monroe's Motions for a New Trial on the Merits and/or a New Penalty Hearing was held.

The Criminal District Court denied relief. Monroe did not avail himself of the opportunity to call any witnesses at the hearing. Instead, he submitted the matter on the federal court record. The State called eyewitness Theodise Collins, daughter of the murdered victim, who was also stabbed in the murderous assault, and who also reiterated her unequivocal identification of Monroe. Contending this ruling was in error, Monroe sought a supervisory writ in the Louisiana Supreme Court. The writ was denied. (See denial of this writ at Appendix B of petitioner's brief)

It is from the denial of the Louisiana Supreme Court's writ that Monroe applies for review in this Honorable Court.

ARGUMENT

State's Reasons For Denying Monroe's Writ Application

1. Failure to present a proper federal question.

Petitioner seeks to invoke the jurisdiction of this Honorable court by virtue of Title 28 U.S.C. Sec. 1257(3) which is as follows:

Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

- (1) By appeal,
- (2) By appeal,
- (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the

ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Petitioner is aggrieved by the state court judgment denying his motion for a new trial. (Louisiana statute governing new trial motions at Appendix A) The ground for denying the motion was that the insufficient "newly discovered evidence" presented at the state hearing which failed to prove to the court that had this evidence been introduced at the trial it would probably have changed the verdict of guilty. Thus, independent state grounds supported the judgment on the motion. This Honorable Court has repeatedly declined to review state court judgments which rest on independent state grounds. See e.g., *Henry v. Mississippi*, 379 U.S. 443, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965). This Court has also declined jurisdiction where the state's highest court delivers no opinion on the issues, and the judgment appears to have rested on non-federal grounds. *Stembridge v. Georgia*, 343 U.S. 541, 72 S.Ct. 834, 96 L.Ed. 1130 (1952). Here, the Louisiana Supreme Court issued no opinion, and the judgment rested on state grounds. Jurisdiction should therefore be declined.

Monroe has failed to present a proper federal question for this Honorable Court to review. The Sixth Amendment right violation found by the federal district court was remedied when he was provided a full hearing on his new trial motion. He cites no procedural deficiency in the state's new trial motion procedures; nor does he claim unfairness or denial of a right in pursuing his motion, nor does he allege error of law. (Louisiana statute governing appellate review of new trial motions at Appendix B) Monroe's only claim is based on his incorrect interpretation of the federal court judgment.

Failure of petitioner to present a proper federal question requires denial of this writ application. 28 U.S.C. Sec. 1257 (3). See, *Dixon v. Duffy*, 342 U.S. 33, 72 S.Ct. 10, 96 L.Ed. 46 (1951); *Young v. Regan*, 337 U.S. 235, 69 S.Ct. 1073, 93 L.Ed. 1333 (1949).

2. This Court need not resolve the Brady material issue.

Petitioner incorrectly alleges that a federal question exists in this case. Monroe's reliance on the principles of collateral estoppel, full faith and credit, and res judicata is misguided. It is clear that the state district court and the federal district court made opposing findings. It does not follow that because the federal district court made a clearly erroneous misapplication of the rule of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), that the trial court was bound to release or retry Monroe when the federal court specifically declined to so rule.

Petitioner repeatedly represents to the Honorable Court that the courts of Louisiana intentionally and knowingly, in open "defiance" and "ignorance", "blatantly disregarded" the judgment of the federal district court ordering that the state court provide Monroe with either one of these two remedies (See petitioner's brief at p. 11). What was ordered by the federal court below is exactly what Monroe received.

**THE FEDERAL COURT'S JUDGMENT.
WHAT WAS FOUND, WHAT WAS NOT FOUND,
WHAT WAS ORDERED.**

The Federal Court Hearing

Although your respondent takes exception to petitioner's appreciation of the evidence actually presented at the full evidentiary hearing in federal district court, it believes it is unnecessary to argue from that evidence. It is sufficient to

note that Gallardo and Stinson testified and some of McWilliam's notes recording his jail house conversation were admitted into evidence.

Based on this evidence, Magistrate Livaudais issued his recommendation. After a *de novo* review of the record the district court adopted the Magistrate's report and issued its Memorandum Opinion (Petitioner's brief Appendix C).

What was found

The federal district court found that a *Brady* violation occurred. The federal district court also found that the violation did not mandate release or retrial. It found that the evidence adduced at the evidentiary hearing was material enough for the state courts to consider deciding whether petitioner should be entitled to a third trial. It was also found that Monroe had received a fair and impartial trial which resulted in his conviction.

What was not found

Neither the federal magistrate, nor the district court who adopted the magistrate's findings, found that another "confession" existed. The federal district court directed the state courts to decide that question based on all the available information. The state court decided, after a full and fair hearing, that the statement was not a confession.

The federal court did not find that petitioner's exclusive remedies were that he be either released or retried. Though asked specifically to do so, they did not find that a *Brady* violation required only one remedy or the other.

What Was Ordered

The state was ordered to provide Monroe with a full hearing on his Motion for New Trial. Petitioner accuses the courts of the State of Louisiana of deliberately "ignoring and defying" the judgment and the authority of the federal system. Petitioner's misinterpretation of the judgment leads to these baseless accusations.

The State respectfully submits that there is no current dispute between the state and federal courts. The state courts fully complied with the federal court's order. It is the findings of fact and law which support that judgment that has both parties in constant disagreement.

The Brady Question

Both parties in this case have spent an incalculable amount of time and effort advancing their respective positions over the question of whether the Stinson statement rises to the level of commonly known "*Brady*" material. Petitioner takes issue with the trial court's refusal to accept the federal court's finding that this evidence is "*Brady*" material. Reasonable minds, and reasonable judges, may differ over whether the evidence, which did not exist and was uncovered after a fair and impartial trial was held, constitutes *Brady* material as *Brady* material has been previously defined by this Court. The facts here are clearly distinguishable from *Brady/Agurs* and its progeny.

The federal courts recognized the prerogative of the State of Louisiana to grant Monroe relief that comported with his constitutional rights. It is the sole reason why the federal district ordered a full hearing and declined to provide Monroe with the remedy he demanded. This Court

need not involve itself in what has become a mere semantical exercise over what category of constitutional case law the facts of this case fall into. The more practical question is whether Monroe is legally entitled to more than has already been provided to him under both state and federal systems of justice.

CONCLUSION

The evidence which originated and was discovered six months after Monroe's fair and impartial jury trial, has been fully explored and weighed by six separate tribunals since its discovery. Each tribunal, when asked to, refused to limit Monroe's remedy to the two he claims are exclusive. The remedy that was ordered, i.e. the *right* to a hearing on the Motion for a New Trial, was provided. Petitioner's claim, although cloaked in notions of federal question, collateral estoppel, and res judicata is a disguised attempt to have this Honorable Court rule on the identical issue that was advanced in his previous application.

Respectfully submitted,

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APPENDICES

APPENDIX A

Louisiana Code of Criminal Procedure

Art. 851. Grounds for new trial

The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.

The court, on motion of the defendant, shall grant a new trial whenever:

- (1) The verdict is contrary to the law and the evidence;
- (2) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error;
- (3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty;
- (4) The defendant has discovered, since the verdict or judgment of guilty, a prejudicial error or defect in the proceedings that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before the verdict or judgment; or
- (5) The court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right. *Amended by Acts 1974, No. 207, § 1.*

APPENDIX B

Louisiana Code of Criminal Procedure

Art. 858. Review of ruling on motion for new trial

Neither the appellate nor supervisory jurisdiction of the supreme court may be invoked to review the granting or the refusal to grant a new trial, except for error of law.